



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Hansford Co,*

Honorable T. D. Sansing  
County Attorney  
Spearman, Texas

Dear Sir:

Opinion No. 0-2624

Re: Authority of independent school district to contract with an attorney, not resident in the county, to collect delinquent taxes.

In your letter of August 9, 1940, you submit to us the following facts: You are the only lawyer residing in Hansford County. The Spearman Independent School District has due it a large amount of delinquent taxes and it desires to make arrangements with you or some other attorney to enforce collection of the same, by suit if necessary. You desire our opinion in substance (1) whether you can contract with the school district to handle such business on a percentage up to 15% or whether if you bring the suits you will be limited to the compensation mentioned in Article 7332, Revised Civil Statutes, and (2) whether the district may contract with an attorney not residing in that county to collect these taxes.

From Article 7343, Revised Civil Statutes, we quote:

"... Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the governing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding

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officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. . . ."

It is thus provided that if the county attorney files such suits for an independent school district his compensation will be the same as provided by law in suits for State and county taxes, which is \$2.00 for the first tract and \$1.00 for each additional tract, in no event exceeding \$5.00 in one case. Article 7332. We see no escape from the proposition that you would be limited to those fees if you should undertake to represent the independent school district in the collection of its delinquent taxes. In fact, Judge Hickman plainly so states in Bell v. Mansfield Independent School District, 129 S. W. (2d) 629. Such is our answer to your first question.

In the Bell v. Mansfield case the Court expressed doubt that an independent school district would be authorized to employ an attorney not residing in the county in view of the language of the statute. However, the Court expressly refrained from making an authoritative pronouncement with reference to that question. Our own opinion is that the provision which would apparently require the employment of an "attorney of the county" is directory, at least to the extent that in such a case as this the school district may contract with some attorney not residing in the county. It is not necessary to hold such language mandatory to make the statute effectual. On the other hand, to hold it mandatory would be to render that part of the statute empowering school districts to employ an attorney to collect its delinquent taxes wholly ineffectual in those counties where no lawyer is resident. There are no negative words in the statute denying the right to contract with an attorney residing out of the county. While not necessarily controlling we think the principles set

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out in City of Uvalde v. Burney, 145 S. W. 311, are applicable to the statute under the particular facts of this case.

Our answer to your second question is an affirmative one, the amount of the percentage to be governed by Article 7335a, Vernon's Civil Statutes, as held in the Bell v. Mansfield case.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

APPROVED AUG 27, 1940

*Hoover Allen*  
FIRST ASSISTANT  
ATTORNEY GENERAL

CHL:caw

